

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

Docket UG-230393

**PUGET SOUND ENERGY’S MOTION
TO STRIKE PORTIONS OF THE
TESTIMONY OF PUBLIC COUNSEL
WITNESS ROBERT L. EARLE**

I. INTRODUCTION

1. Pursuant to WAC 480-07-375, Puget Sound Energy ("PSE") hereby moves to strike those portions of the prefiled response testimony and exhibits of Public Counsel submitted on September 8, 2023, that challenge the prudence of the Tacoma LNG Project ("LNG Facility") on grounds and issues decided by the Commission, less than a year ago.¹ Such testimony and exhibits should be stricken because they are outside the scope of issues presented in this proceeding. The Commission rule at issue is WAC 480-07-375(1)(d) (motions to strike).

2. Specifically, PSE moves the Commission to strike the following lines and pages from the Response Testimony of Robert L. Earle (Exh. RLE-1CT): 7:21 to 15:9 (contesting the design day

¹ Dockets UE-220066, UG-220067, & UG-210918 (Consolidated) ("2022 PSE GRC") Order 24/10 ("Final Order"), ¶ 449.

standard); 16:3 to 16:21 (contesting Board consideration of the design day standard); and 31:4 to 32:14 (retroactivity of the new public interest standard) (collectively the “Testimony”). The Testimony improperly addresses issues relevant to the need for the LNG Facility, which was resolved by the Commission in Dockets UE-220066, UG-220067, & UG-210918 (“2022 GRC”) and is therefore, beyond the scope of this proceeding. The Commission’s Final Order in PSE’s 2022 GRC is clear, parties may challenge the prudence of later construction and operation costs, but PSE’s decision to develop and construct the LNG Facility was prudent.²

3. The Testimony should be stricken because it improperly challenges the prudence of the decision to develop and construct the LNG Facility, specifically whether the facility is needed, rather than provide relevant testimony to the issues presented by PSE before the Commission. The Commission’s decision in PSE’s 2022 GRC should control the scope of this proceeding and any testimony re-opening previously decided issues or expanding the scope should be stricken.

II. BACKGROUND

4. PSE’s 2022 General Rate Case resulted in three settlements that together resolved all major issues presented to the Commission, including a settlement on the Tacoma LNG Facility (the “Settlement”) that would move costs for the development, construction, and operation of the LNG Facility into a tracker and recovery of those costs would be evaluated in a subsequent proceeding.³ The Commission approved the Settlement, with conditions, and authorized PSE to

² Final Order ¶ 449.

³ Final Order ¶¶ 508-510, Appendix A, B, & C.

file the Tacoma LNG tracker at issue in this case.⁴ In approving the Settlement, the Commission agreed that PSE acted prudently in the development and construction of the LNG Facility up through the initial decision to authorize construction on September 22, 2016.⁵

5. The LNG Settlement was opposed and litigated by Public Counsel in the 2022 GRC.⁶ Among the issues Public Counsel challenged was the forecasting methods PSE used to determine the need for the LNG Facility.⁷ The Settlement, as approved in the Commission's Final Order, resolved the issue of certain prudency factors up to the decision to build, including whether there is a need for the facility.⁸ The Commission rejected several issues raised by Public Counsel relating to 1) the demonstration of need⁹ and 2) the public interest standard applicable to the Tacoma LNG Facility.¹⁰

6. Despite the ruling of the Commission, Public Counsel submitted the following testimony, that is beyond the scope of this proceeding and was already addressed in PSE's 2022 GRC:

- 1) Earle, Exh. RLE-1T 7:21 to 15:9: contesting the design day standard.
- 2) Earle, Exh. RLE-1T 16:3 to 16:21: arguing PSE's Board was not informed of the design day standard.
- 3) Earle, Exh. RLE-1T 31:4 to 32:14: testimony arguing the Commission should retroactively consider principles in the newly revised public interest standard.

⁴ Final Order ¶¶ 449-450.

⁵ Final Order ¶ 449.

⁶ Final Order at ¶ 33.

⁷ Final Order at ¶¶ 333-334 (citing testimony of R. Earle, Exh. RLE-1CTr at 2:25-23:17, arguing PSE incorrectly forecasted shortfalls, the forecast exceeded actual peak loads, and the Board was uninformed on these issues).

⁸ Final Order at ¶¶ 394-395, 405, 412, 419, 449, & Appendix C at ¶ 18.

⁹ Final Order at ¶¶ 394-399, 405, and 419.

¹⁰ Final Order at ¶¶ 421-448.

7. As discussed herein, the Commission should strike the portions of Public Counsel’s testimony listed above because the Testimony exceeds the scope of this proceeding. The issues before the Commission are related to the prudence of construction and operation costs of the LNG Facility, not allegations related to need or the retroactivity of the new public interest standard.¹¹ The Testimony unnecessarily expands the scope of this proceeding, will require the Commission and parties to expend further time and resources if the parties must re-address these issues, and does not assist the Commission in making a determination on the issues related to construction and operations costs presented in this docket.

III. ARGUMENT

8. Public Counsel’s Testimony is challenging the prudence of the decision to develop and construct the facility—an issue already decided by the Commission—and not the costs of the LNG Facility. The Commission provided direction to the parties in the Final Order in PSE’s 2022 GRC that the purpose of this proceeding is to evaluate the capital and operating costs of the LNG Facility.¹² Instead, Public Counsel’s Testimony questions the propriety of PSE’s load forecasts in its decision to develop and construct the LNG Facility and requests that the Commission retroactively apply the newly revised public interest standard.

9. The applicable standard here is whether the Testimony is relevant, and therefore admissible, in this proceeding.¹³ The Commission has broad discretion to accept evidence it

¹¹ Final Order at ¶¶ 449-450.

¹² *Id.*

¹³ WAC 480-07-495(1).

deems relevant, and equally broad discretion to reject irrelevant evidence.¹⁴ Accordingly, the Commission will strike witness testimony and evidence that “attempts to reopen and argue” issues already addressed in a previous order.¹⁵ To the extent a party submits testimony or exhibits outside the scope of the pending proceeding, the Commission will strike that testimony on the basis of relevance as well.¹⁶ Striking irrelevant testimony before the hearing is beneficial because it preserves Commission and party resources.¹⁷

10. The Testimony can be divided into two categories of issues presented in PSE’s 2022 GRC and already addressed by the Commission in the Final Order: (a) PSE’s forecasting methods and need for the LNG Facility, and (b) the retroactivity of the newly revised public interest standard. The Testimony should be stricken as irrelevant because it does not address the prudence of later construction and operation costs,¹⁸ and because it reopens issues already addressed by the Commission in PSE’s 2022 GRC.

A. *The Testimony challenging the need for the Tacoma LNG Facility should be stricken. (Earle, Exh. RLE-1T 7:21 to 15:9 and 16:3 to 16:21)*

11. Public Counsel challenged PSE’s forecasting methods and whether it demonstrated the need for the LNG Facility in the 2022 GRC.¹⁹ In the current proceeding, Public Counsel is again

¹⁴ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Dockets TC-143691, TC-160516, TC-161257 (Consolidated) (“*In re Speedishuttle*”), Order 16/09 (Feb. 3, 2017).

¹⁵ *Id.*

¹⁶ See *AT&T Communications of The Pacific Northwest, Inc. v. Verizon Northwest, Inc.*, Docket UT-020406 Order 05 (Feb. 2003) (striking testimony for relevance that addressed charges unrelated to the costs at issue before the Commission); *WUTC v. PSE*, Dockets UE-090704 and UG-090705 (consolidated) Order 10 (Jan. 8, 2010) (striking testimony related to renewable energy credit costs that were to be addressed in another proceeding).

¹⁷ *In re Speedishuttle*, Order 16/09 (Feb. 3, 2017).

¹⁸ Final GRC Order at ¶ 449.

¹⁹ Final GRC Order at ¶¶ 394-397 (citing 2022 GRC testimony of Earle, Exh. RLE-14CT at 3:7-13, 5:15-22, 8:6-8).

challenging the need for the Tacoma LNG Facility by disputing the propriety of a *component* of the forecasting method used to determine need, PSE's design day standard.²⁰ The Testimony relies on testimony from the 2022 GRC as the basis for disallowing the design day standard rather than testimony from the current docket.²¹ Public Counsel's Testimony alleges issues with the design day standard dating back to 2005, but then portends to be challenging the prudence of PSE's post-2016 decisions.²²

12. For example, Public Counsel's Testimony challenges PSE's demand forecasting methods as incorrect because of their connection to 2005 planning standards.²³ Public Counsel's Testimony cites 2022 GRC design day testimony because PSE's forecasts incorporated the design day into PSE's demonstration of need and peak day consideration for the LNG Facility. Public Counsel is targeting PSE's methodology for demonstrating need again even though it extensively challenged PSE's peak day forecasts in the 2022 GRC,²⁴ and the Commission rejected Public Counsel's arguments.²⁵

13. Public Counsel also challenges PSE's peak demand forecasting methodologies in this proceeding by arguing PSE's Board did not evaluate the design day standard.²⁶ This section of the Testimony challenges whether the PSE Board was adequately informed and considered the

²⁰ Earle, Exh. RLE-1CT 7:21-15:9, 16:3-16:32.

²¹ See Earle, Exh. RLE-1CT at 8:1-5 (citing Roberts' testimony from the 2022 GRC); Earle, Exh. RLE-1T at 8:13-9:5 (citing Roberts' settlement testimony from the 2022).

²² See Earle, Exh. RLE-1CT at 14:3-5 (citing PSE's modeling prior to 2016 and PSE's citation of the 2022 GRC Order).

²³ See Earle, Exh. RLE-1CT at 9:5-13.

²⁴ 2022 GRC, Earle, Exh. 14-CT at 3:1-6:20.

²⁵ Final Order at ¶¶ 394-395, 419.

²⁶ See Earle, Exh. RLE-1CT at 12:4-13:2.

need for the LNG Facility based on criteria *prior* to 2016.²⁷ In the 2022 GRC, Public Counsel similarly challenged whether PSE’s Board was adequately informed based on the forecasting data.²⁸ Public Counsel argued the alleged deficiencies in PSE’s forecasting methodology should have resulted in the PSE Board questioning the need to construct the LNG Facility,²⁹ but the Commission did not agree.³⁰ The Final Order stated further that the “Commission has reviewed and accepted the approach PSE uses for its gas planning and IRP processes since at least 2005.”³¹ PSE’s Board was provided “updated forecasts of gas demand over the course of the development and construction of the facility” and the Commission did not accept Public Counsel’s challenge to that prudence factor.³²

14. The Testimony challenging PSE’s forecasting methodology should be stricken for relevance because it challenges the issue of need and PSE planning decisions prior to the 2016 decision to build. Public Counsel’s Testimony is an attempt to relitigate the Commission’s determination with respect to PSE’s demonstration of need to build the LNG Facility, even if it masquerades as a purported challenge to the costs of the LNG Facility after 2016. As Public Counsel’s own witness admits, the “raison d’être” to disallow post-2016 costs is based on the design day standard found in PSE’s 2022 GRC testimony supporting the decision to build the LNG Facility, not PSE’s testimony in the pending docket.³³

²⁷ *Id.*

²⁸ 2022 GRC, Earle, Exh. RLE-14-CT at 3:1-6:20.

²⁹ 2022 GRC, Earle, Exh. RLE-14-CT at 6:10-:20.

³⁰ Final Order at ¶ 419 (“we agree with PSE that it appropriately based planning decisions on its design day standard”).

³¹ Final Order at ¶ 394.

³² Final Order at ¶ 419.

³³ See Earle, Exh. RLE-1CT at 8:13-14 (citing 2022 GRC testimony of Ronald J. Roberts, Exh. RJR-30T at 6:3-15).

15. The Commission found that “PSE reasonably relied on its forecasts for gas demand, which showed a need for an LNG peak-shaving facility[,]” and Public Counsel’s challenge of PSE’s forecasting methods was “unpersuasive” in the 2022 GRC.³⁴ PSE’s forecasts for gas demand are not at issue in this proceeding, and the Commission should strike the Testimony for lack of relevance.

B. *The Testimony challenging the public interest standard applied by the Commission for the Tacoma LNG Facility should be stricken. (Earle, Exh. RLE-1T 31:4 to 32:14)*

16. Public Counsel’s Testimony also challenges the public interest framework applied in the Final Order for the LNG Facility.³⁵ The Commission opted to not retroactively hold PSE to a standard that was not in place at the time the LNG Facility was being built.³⁶ The Commission emphasized in the Final Order that RCW 80.28.425 “should not be applied retroactively.”³⁷ Public Counsel’s Testimony requests the Commission to apply the expanded standard in RCW 80.28.425 when evaluating the prudence of construction and operation costs of the LNG Facility. To the extent the Testimony attempts to re-litigate the Commission decision in the Final Order, or otherwise “incorporate[s] information available only through hindsight into the prudence determination”³⁸ it should be stricken from the record.

³⁴ Final Order at ¶ 394.

³⁵ Earle, Exh. RLE-1CT 31:4 to 32:14.

³⁶ Final Order at ¶¶ 422-431.

³⁷ Final Order at ¶ 427.

³⁸ Final Order at ¶ 428.

IV. CONCLUSION

17. Public Counsel's Testimony makes assertions that are irrelevant to the underlying prudence determination for costs of the LNG Facility and are improper. The Commission should strike Public Counsel's Testimony as described above.

RESPECTFULLY SUBMITTED this 27th day of September, 2023.

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